

Federal Communications Commission

DA 05-27

Before the
Federal Communications Commission
Washington, D.C. 20554

Jan 12 11:51 AM '05

Docket

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(St. Albans and Grand Isle, Vermont and)

Tupper Lake, New York))

MB Docket No. 05-3

RM-11132

NOTICE OF PROPOSED RULE MAKING

Adopted: January 5, 2005

Released: January 10, 2005

Comment Date: March 3, 2005

Reply Comment Date: March 18, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Champlain Communications Corp., ("Petitioner"), licensee of Station WLFE-FM, Channel 272A, St. Albans, Vermont. Petitioner seeks to amend the FM Table of Allotments by upgrading Channel 272A to Channel 272C3 and reallocating Channel 272C3 from St. Albans to Grand Isle, Vermont, thus providing Grand Isle with its first local aural transmission service. To accommodate the foregoing changes for Station WLFE-FM, Petitioner proposes that FM Station WRGR, Channel 272A, Tupper Lake, New York, substitute Channel 271C3 for Channel 272A and move its transmitter to a new site. Radio Lake Placid, Inc., licensee of FM Station WRGR, has agreed to effectuate the foregoing accommodating changes to its station if Petitioner's rulemaking proposal is granted. Petitioner states that if the Commission grants its petition for rule making, Petitioner will file applications for construction permits to effectuate its proposal and if such applications are granted, Petitioner will construct the facilities authorized pursuant to those applications.

2. Petitioner invokes the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ The proposed use of Channel 272C3 at Grand Isle, Vermont, is mutually exclusive with Station WLFE-FM's existing authorization at St. Albans, Vermont.

3. Petitioner asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*,² by providing Grand Isle, Vermont, with its first local aural transmission service. The allotment of Channel 272C3 to Grand Isle would not deprive St. Albans, Vermont, of its sole local transmission outlet, because St. Albans will retain

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

local service from AM Station WRSA. Because Petitioner's proposal is consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall propose to modify the authorization of Station WLFE-FM without entertaining competing expressions of interest in the use of Channel 272C3 at Grand Isle, Vermont, or requiring Petitioner to demonstrate the availability of an additional equivalent channel for use by other parties.

4. As a result of Petitioner's upgrade in channel and its move to Grand Isle, the gain area of Channel 272C3 at Grand Isle will contain 136,388 persons and cover 3,574 square kilometers, for a net gain over Station WLFE-FM's current service area of 110,949 persons and 2,285 square kilometers. One section of the loss area will be left with only four fulltime services once Station WLFE-FM moves to Grand Isle. This underserved area contains 9,054 people and covers 412 square kilometers. The rest of the loss area and all of the gain area will be completely covered by five full-time services and thus are considered to be well-served.

5. In support of moving its Station WLFE-FM to Grand Isle, Petitions states that Grand Isle is a community for allotment purposes. Specifically, it is a town with a 2000 Census population of 1,955 persons and a number of local government offices, including the Town of Grand Isle Board of Selectmen, and the Town of Grand Isle Zoning Office, its own zip code, a volunteer fire department, and a number of churches and businesses, some of which have "Grand Isle" in their names.

6. We find that Grand Isle is a community for allotment purposes. We believe that Petitioner's proposal warrants consideration because it would provide Grand Isle with its first local aural transmission service. Consistent with the technical requirements of the Commission's rules, Channel 272C3 can be allotted to Grand Isle, Vermont, utilizing coordinates of 44-44-07 NL and 73-30-57 WL, with a site restriction of 17.4 kilometers (10.8 miles) west of Grand Isle. Consistent with the technical requirements of the Commission's rules, Channel 271C3 can be allotted to Tupper Lake, New York, at coordinates of 44-07-21 NL and 74-31-52 WL, with a site restriction of 12.6 kilometers (7.8 miles) southwest of Tupper Lake. Since both the Grand Isle, Vermont, and the Tupper Lake, New York transmitter sites are located within 300 kilometers (199 miles) of the United States-Canadian border, concurrence with these proposed allotments has been requested from the Canadian Government.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Grand Isle, Vermont	-----	272C3
St. Albans, Vermont	272A	-----
Tupper Lake, New York	272A	271C3

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by

reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before March 3, 2005, and reply comments on or before March 18, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036-1600

10. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.³ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

12. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a

³ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.